

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
 DANIEL G. AND JULIE M. NAUMAN)

Appearances:

For Appellants: Daniel G. Nauman,
in pro. per.

For Respondent: Kendall E. Kinyon
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Daniel G. and Julie M. Nauman against a proposed assessment of additional personal income tax in the amount of \$37.00 for the year 1976.

Appeal of Daniel G. and Julie M. Nauman

Appellants Daniel G. and Julie M. Nauman are husband and wife. Until July 24, 1976, appellants **were** unmarried, and had each rented and maintained a separate place of residence. On July 24, 1976, appellants married and thereafter occupied a single rented residence. They were residents of California for all of 1976.

Appellants filed a joint 1976 California personal income tax return. On their return they claimed two renter credits of \$37.00 each. Respondent determined that appellants were entitled to only one renter credit between them and therefore disallowed one of the claimed credits. Upon appellants' protest to that action, respondent affirmed its position. This appeal followed.

The issue, in view of section 17060 of the Revenue and Taxation Code, is whether the appellants, as husband and wife, are each required to have maintained a separate place of residence for the entire taxable year, **rather than** for some lesser period, in order to qualify for two renter credits. Respondent reads Revenue and Taxation Code **section** 17053.5 to answer that question in the affirmative. Appellants, on the other hand, argue **that such** a reading would be unfair to married couples **for** like themselves in that it would allow them but **one** credit when they had each rented separately for a **major part of the year**. Furthermore, they contend that the statute is capable of being read to allow them two renter credits so long **as** they each maintained a separate residence **on March 1, 1976**.

Appellants cite Warner v. Kenny, 27 Cal. 2d 627 [165 P.2d 889], wherein it is stated that if the language of a statute is fairly susceptible of two constructions, one which will render it reasonable, fair and harmonious with its manifest purpose, and the other of which will be productive of absurd **consequences**, the first should be accepted. Appellants assert that Revenue and Taxation Code **section** 17053.5 is susceptible of two constructions and advocate their proposed construction as more reasonable than that supported by respondent.

Appellants' argument is misconceived. Appellants' assumption that section 17053.5 is a statute fairly susceptible of two constructions is erroneous. Section 17053.5 of the Revenue and Taxation Code provides, in pertinent part, as follows:

Appeal of Daniel G. and Julie M. Nauman

(a) For taxable years beginning after December 31, 1975, in the case of qualified renters, there shall be allowed credits against the tax computed under this part The credit shall be in the amount of ~~thirty-~~seven dollars (\$37).

Except as provided in subdivision (b) of this section a husband and wife shall receive but one credit under this section. ...

* * *

(b) In the case of a husband and wife, if each spouse maintained a separate place of residence and resided in this state during the entire taxable year, each spouse will be allowed the full credit provided **in subdivision (a)**. (Emphasis added.)

To us the statute is clear and unambiguous. It provides for the allowance of two renter credits to a husband and wife if each spouse observes two requirements for the entire taxable year. The first requirement is that each spouse have been a resident of California for the entire year, and the second one is that each spouse have maintained a separate place of residence for the entire year.

Given the clarity of the above-stated provisions, we are obligated to deny appellants' claim to the additional renter credit. This Board is charged with interpreting the law as enacted by the Legislature and lacks authority to change that law. (Appeal of Chester A. Rowland, Cal. St. Bd. of Equal., Oct. 21, 1975.) Moreover, a statute free from ambiguity must be enforced as written. (Anderson v. Jameson (I.M.) Corp., 7 Cal. 2d 60 [59 P.2d 962]; Malone v. State Employees Retirement System, 151 Cal. App. 2d 562 [312 P.2d 296]; Appeal of James W. and Margaret R. Henderson, Cal. St. Bd. of Equal., Feb. 6, 1980; Appeal of Seymour and Arlene Grubman, Cal. St. Bd. of Equal., April 22, 1975; Appeal of Dorothy Shinder, Cal. St. Bd. of Equal., Aug. 30, 1967.) Respondent interpreted the applicable law correctly and acted properly in disallowing one of the renter credits claimed by appellants.

As to appellants' claim that the above result is unfair, such claim should be addressed to the Legis-

Appeal of Daniel G. and Julie M. Nauman

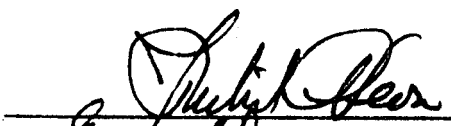

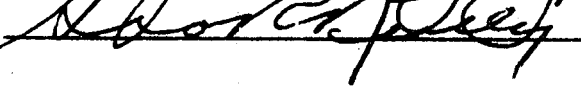
lature rather than to those charged with the duty of enforcing the law as written. (Appeal of Samuel R. and Eleanor H. Walker, Cal. St. Bd. of Equal., March 27, 1973.)

O R D E R

Pursuant **to** the views expressed in the opinion of the board on file. in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Daniel G. and Julie M. Nauman against a proposed assessment of additional personal income tax in the amount of \$37.00 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, **this 1st day** of August , 1980, by the State Board of Equalization.

 , Chairman
 , Member
 , Member
_____, Member
_____, Member